CHICAGO & ALTON RAILROAD COMPANY *v.* TRANBARGER.

ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

No. 214. Argued March 19, 1915.—Decided June 1, 1915.

In an action for damages under the statute of Missouri requiring owners of railroads to maintain ditches along the right-of-way as amended in 1907 so as to require outlets for water across the rights-of-way and imposing liability and penalties for non-compliance within three months after completion and where the embankment causing damage had been erected more than three months prior to the amendment of 1907, *held* that:

The amendment to the statute was not an *ex post facto* law: it did not penalize the railroad company for the manner in which it originally built the embankment prior to the amendment but for the manner in which it maintained it subsequently thereto.

The time limit should properly be construed as relating to railroads

usual course, and thereby injure the land of another, has little reference to the substantial enjoyment of the railroad right of way. Nor is it at all essential to the protection of the railroad itself from surface water. It cannot reasonably be contended that a railroad cannot be maintained and operated as safely and as conveniently over a bridge, trestle, culvert, or other opening calculated to admit the passage of surface water, as upon a solid embankment, or that there is any substantial advantage in favor of the latter except that it avoids the expenditure necessary to be made for the construction and maintenance of openings in order that the embankment shall no longer be the occasion of injury to the lands of others. The previous immunity from responsibility for such injury was nothing more than a general rule of law, which was not in terms or by necessary intendment imported into the contract. For just as no person has a vested right in any general rule of law or policy of legislation entitling him to insist that it shall remain unchanged for his benefit (*Munn* v. *Illinois*, 94 U. S. 113, 134; *Hurtado* v. *California*, 110 U. S. 516, 532; *Buttfield* v. *Stranahan*, 192 U. S. 470, 493; *Martin* v. *Pittsburg &c. R. R.*, 203 U. S. 284, 294), so an immunity from a change of the general rules of law will not ordinarily be implied as an unexpressed term of an express contract. See *Gross* v. *United States Mortgage Co.*, 108 U. S. 477, 488; *Pennsylvania R. R.* v. *Miller*, 132 U. S. 75, 83.

(3) But a more satisfactory answer to the argument under the contract clause, and one which at the same time refutes the contention of plaintiff in error under the due process clause, is that the statute in question was passed under the police power of the State for the general benefit of the community at large and for the purpose of preventing unnecessary and wide-spread injury to property.

It is established by repeated decisions of this court that neither of these provisions of the Federal Constitution

has the effect of overriding the power of the State to establish all regulations reasonably necessary to secure the health, safety, or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; and that all contract and property rights are held subject to its fair exercise. *Atlantic Coast Line* v. *Goldsboro*, 232 U. S. 548, 558, and cases cited. And it is also settled that the police power embraces regulations designed to promote the public convenience or the general welfare and prosperity, as well as those in the interest of the public health, morals, or safety. *Lake Shore & Mich. Southern Ry.* v. *Ohio*, 173 U. S. 285, 292; *C., B. & Q. Ry.* v. *Drainage Commissioners*, 200 U. S. 561, 592; *Bacon* v. *Walker*, 204 U. S. 311, 317.

We deem it very clear that the act under consideration is a legitimate exercise of the police power, and not in any proper sense a taking of the property of plaintiff in error. The case is not at all analogous to those which have held that the taking of a right of way across one's land for a drainage ditch, where no water-course exists, is a taking of property within the meaning of the Constitution. The present regulation is for the prevention of damage attributable to the railroad embankment itself, and amounts merely to an application of the maxim *sic utere tuo ut alienum non lædas*. Of course, compliance with it involves the expenditure of money; but so does compliance with regulations requiring a railroad company to keep its roadbed and right of way free from combustible matters; to provide its locomotive engines with spark arresters; to fence its tracks; to provide cattle guards and gates at crossings, or bridges or viaducts, or the like. Such regulations as these are closely analogous in principle, and have been many times sustained as constitutional. *Minneapolis Railway Co.* v. *Beckwith*, 129 U. S. 26, 31; *Minneapolis & St. Louis Railway* v. *Emmons*, 149 U. S. 364, 367; *St. Louis & San Francisco Ry.* v. *Mathews*, 165 U. S.

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And it is well settled that the enforcement of uncompensated obedience to a legitimate regulation established under the police power is not a taking of property without compensation, or without due process of law, in the sense of the Fourteenth Amendment. *Chicago, Burlington &c. R. R.* v. *Chicago*, 166 U. S. 226, 255; *New Orleans Gas Co.* v. *Drainage Comm.*, 197 U. S. 453, 462; *C., B. & Q. Ry.* v. *Drainage Commissioners*, 200 U. S. 561, 591.

(4) The contention that the statute in question denies to plaintiff in error the equal protection of the laws is not seriously pressed, and is quite unsubstantial. Railroad embankments, stretching unbroken across tracts of land that are liable to injury from surface waters, differ so materially from other artificial constructions and improvements to which the doctrine of the "common enemy" applies, that there is very plainly a substantial ground for classification with respect to the object of the legislation. The statute applies alike to corporations, companies, and persons owning or operating railroads that are so constructed as to obstruct the flow of drainage and surface waters, and we deem it unexceptionable in this regard.

Judgment affirmed.